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5. Contracts—Entire Contracts—Contracts for Support.—Where two persons obligated themselves to support their parents in consideration of the conveyance of land to the obligors, their contract was entire, and not severable, and, when breached by one of the obligors, avoided the agreement in its entirety.

6. Deeds—Defeasances—Intention of Parties.—While courts regard with disfavor conditions and defeasances which are calculated to prevent or defeat the absolute vesting of titles, they will not hesitate to give effect to the intention of the parties when the condition or defeasance is clear and explicit.

7. Assignments—Contracts—Executory Contracts for Personal Services.—An executory contract for personal service, founded on personal trust or confidence, is not assignable.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 4, Assignments, §§ 28-31.]

8. Equity—Trying Issues between Codefendants.—The rule that, if plaintiff in an equitable proceeding cannot get at his right without trying and deciding a case between codefendants, the court will try and decide that case and the codefendants will be bound, but that, if the relief given plaintiff does not require or involve a decision of any case between codefendants, the codefendants will not be bound by any proceedings which may be necessary only to the decree the plaintiff obtains, is not applicable where the rights and equities between codefendants necessarily arise upon the pleadings and evidence between plaintiffs and defendants, and hence does not apply where the principal question involved in the pleadings and decided by the court was the construction of a contract for support executed by codefendants, and the necessary result of the decision of that issue between plaintiff and defendants was to affect the rights of defendants among themselves and in such a case a decree might be rendered between the codefendants without cross-pleadings.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 19, Equity, § 1000.]

THOMAS et al. v. BOYD et al.

Sept. 10, 1908;

[62 S. E. 346.]

1. Judgment—Equitable Relief—Grounds of Relief.—To entitle a party to equitable relief against a default judgment, it must be shown that defense was not made because of fraud, accident, surprise, or some adventitious circumstance beyond defendant's control.

2. Same.—Application was made for the establishment of a road with gates, and viewfers appointed, and damages were waived by eight of the nine landowners affected by the road. No further steps

were taken until a year thereafter, when a second application was made by the same persons to open a road upon the same location and viewers appointed, and an order was entered showing that no defense was made to the road, and directing the case to be certified to the board of supervisors on the question of damages, only one person claiming damages. When the road was opened, gates were erected and maintained for some time by complainant and others, when they learned that the road had been established without gates. Complainants believed the road was a gate road, and some of the applicants represented to them that the second road applied for was the same as the first, a second application being rendered necessary because the papers in the first proceeding were lost, and that complainants waived their right to damages under this understanding, that two of the viewers thought it was a gate road, which was also the general understanding in the community. An open road would cause considerable damages to most of the landowners who had waived damages, and the road was of slight benefit to one of the owners to whom damages would be very heavy. Held that, while complainants might have ascertained from the record that the second application was for an open road, they were not guilty of negligence or want of diligence in failing to ascertain that fact and make defense to the application, so as to prevent equity from granting relief from the judgment in that proceeding.

3. Appeal and Error—Proceedings in Lower Court—Objections—Failure to Object—Effect.—Where objections made to testimony when the depositions were taken were not called to the attention of the court below, they will be treated as waived on appeal.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 2, Appeal and Error, §§ 1258-1280.]

STEINMAN *v.* HAGAN *et al.*

Sept. 10, 1908.

[62 S. E. 348.]

Specific Performance—Necessary Parties—Subpurchasers.—Only the purchaser is a necessary party defendant to a suit by the vendor for specific performance of the contract of sale; so that one to whom the purchaser has sold, though not made a party, was bound by the decree for sale of the property for payment of the purchase money due the original vendor.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 44, Specific Performance, § 343.]